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14  
15 UNITED STATES BANKRUPTCY COURT  
16 DISTRICT OF NEVADA

17 —ooOoo—

18 In Re:  
USA COMMERCIAL MORTGAGE  
19 COMPANY, et al.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

20 Debtors.

21  
22 JOINTLY ADMINISTERED  
Chapter 11

Affects:

- 23 ☒ All Debtors  
24 ☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
25 ☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
26 ☐ USA Securities, LLC

Hearing Date: N/A  
Hearing Time: N/A

**DECLARATION OF KEVIN A.  
DARBY, ESQ. IN SUPPORT  
OF EMERGENCY EX PARTE  
MOTION FOR CONTINUANCE OF  
HEARING ON APPELLANTS'  
MOTION FOR LIMITED STAY  
PENDING APPEAL**

1 I, KEVIN A. DARBY, being first duly sworn, do depose and say under the penalty of  
2 perjury:

3 1. I am a duly-licensed attorney and an associate of the Law Offices of Alan R.  
4 Smith and represent the Lenders Protection Group (the "LPG") in the above captioned  
5 bankruptcy case.

6 2. I have knowledge of and am competent to testify to the matters stated herein,  
7 except to those matters stated upon information and belief, and as to those matters, I believe  
8 them to be true.

9 3. On February 28, 2007, at approximately noon (PST), our office received  
10 Appellees-Debtors *Opposition To Motion For Limited Stay Pending Appeal*, which was 73  
11 pages long (6 pages of which consist of the caption, table of contents and table of  
12 authorities) (the "Debtors' Stay Opposition").

13 4. Also on February 28, 2007, at approximately noon (PST), our office received  
14 the the Official Committee of Equity Security Holders USA Capital First Trust Deed Fund,  
15 LLC's, *Opposition To Motion For Limited Stay Pending Appeal* and a *Joinder* in the  
16 Appellees-Debtors' Stay Opposition (the "FTDF Stay Opposition").

17 5. Given the breadth and scope of the Oppositions to the Stay Motion, Appellants  
18 do not have sufficient time to file a formal written reply to the Debtors' Stay Opposition  
19 and the FTDF Stay Opposition. The Oppositions, together with the supporting *Declaration*  
20 *of Susan M. Smith*, total approximately 93 pages. It is impossible for Appellants to review,  
21 digest and formulate responses to the numerous arguments propounded in opposition to the  
22 Stay Motion in the less than 24 hours currently afforded to them. Appellants will be  
23 substantially prejudiced if they are required to go forward with the hearing because they  
24 will not be afforded a sufficient opportunity to brief the issues raised in the Oppositions and  
25 prepare for oral argument.

26 6. At approximately 1:30 p.m. (PST) on February 28, 2007, I contacted M.s  
27 Annette Jarvis, counsel for Appellees-Debtors, to request a stipulated continuance of the  
28 Stay Hearing. Appellees' counsel indicated that she would discuss the matter with her

1 client and the Committees and determine whether a stipulated continuance was agreeable.  
2 *Id.* At approximately 3:30 p.m. (PST) I heard back from Appellees' Counsel, who  
3 explained that she was unable to reach all interested parties necessary to consider the  
4 requested continuance and, therefore could not agree to a continuance at this time.

5 I hereby swear under penalty of perjury that the assertions of this Declaration are  
6 true.

7 DATED: February 28, 2007.

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9 By: /s/ Kevin A. Darby, Esq.  
10 KEVIN A. DARBY, ESQ.  
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